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Dear Ms. GuptaBhaya

Re: Proposed Guidance on Marketplace Thresholds (the "Proposed Guidance")

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the Proposed Guidance. The Association generally supports the content of the Guidance; however, we continue to have a significant concern with the concept of dealer imposed thresholds as noted below.

In sections 5 and 6.2 of the Notice, IIROC indicates that it continues to consider whether the obligation under Part 8 of UMIR Policy 7.1 for Participants and Access Persons to tailor the order parameters of each automated order system to not exceed Marketplace Thresholds. As noted in our previous submission, this is extremely problematic for dealers.

The requirement for dealers to set triggers based on Marketplace Thresholds would create a number of problems in the trading environment that currently do not exist, and would not exist under a regime where marketplaces are responsible for the administration of the thresholds. Adding a layer of dealer based controls would not enhance the effectiveness of the marketplace controls, rather it would introduce complexity and inconsistency, and would ultimately prejudice certain investors.

A critical question is how the thresholds would be expected to operate at the dealer level. It is unclear whether dealer thresholds should be triggered based on a prediction that their orders will move the market past a Marketplace Threshold, or whether the trade flow of other dealers should also be considered. If other firms' trades in combination with the dealer's own trades are to be considered, it is practically impossible to predict whether trades approaching a Marketplace Threshold should be undertaken, given that trading is often undertaken simultaneously by various parties. If trading levels are approaching the threshold, are dealers obligated to hold back on their orders to prevent a situation where they, alone or in combination with others, might trigger a threshold? If so, dealers must then decide which clients' trades are to be held back, in the event it *might* trigger a threshold. This requires a manual decision making procedure, which not only slows down the process, but also creates potential liability, as clients whose orders are held back could be prejudiced.

The technology required to create dealer thresholds would be extremely elaborate and expensive, and would still not be completely effective in preventing trades exceeding Marketplace Thresholds when multiple parties are trading.   The difficulty is compounded by the fact that not all dealers would use the same parameters in setting the triggers for their thresholds. As noted in our previous submission, outcomes would be inconsistent and disorderly, as standards, processes and latency among brokers may differ in respect of when orders are rejected or accepted. This makes an accurate assessment of whether the 10% threshold will be triggered, virtually impossible. This introduces considerable uncertainty in the marketplace in general and would lead to unequal treatment of clients, depending on the triggers that dealers use to avoid exceeding the Marketplace Thresholds. It would require dealers to forecast at what point the market might trigger a Marketplace Threshold, where many of the variables are out of the control of the dealer. The dealer's best guess would then result in trading decisions about what clients may or may not be able to trade.

In order to implement an effective dealer threshold, dealers would require incoming real time market data that would be able to ascertain what the effect of any given order would have on the market, in advance of actually triggering the threshold.   Given the number of market participants and the speed and volume at which orders are undertaken, it is improbable that such a system could be built with accuracy or at a reasonable cost.

Given that the marketplaces are the central agencies where trades from multiple sources are executed, it is appropriate that the thresholds are administered at that level. The benefits of requiring individual dealers to hold back or stop their order flow when marketplaces have the ability and duty to oversee and regulate trades for the entire market are unclear. An unintended consequence may be that quotes beyond the threshold would not be displayed, which would reduce transparency and liquidity. Adding dealer thresholds creates redundancy that would unnecessarily complicate trading without enhancing risk management at the client, dealer, market level as a whole.

As noted in our prior submission, IIROC does not deal with the 10% threshold in a consistent manner. IIROC has, on occasion, exercised its discretion to permit price movements beyond 10%. Given that the 10% threshold is not hard-wired, dealers cannot be expected to anticipate when a Marketplace Threshold will be triggered in individual circumstances. Requiring dealers to program their systems at this level may prevent certain bona-fide trades from taking place. Given that IIROC has discretion to re-price erroneous trades to levels that are beyond 10%, broker-dealers should also be allowed to submit orders that may possibly exceed the Marketplace Threshold under circumstances where it appears reasonable to do so. Where such action is not reasonable, the Marketplace Thresholds as administered by the marketplaces will prevent the trade from taking place.

Response to IIROC's Specific Questions

1. **IIROC has endeavoured to structure the Proposed Guidance such that its implementation would have minimal technological implications for Participants, Access Persons, the Information Processor, and service providers. Has IIROC achieved this objective? If not, what suggestions might we consider to better achieve the desired result?**

   Except as it relates to the proposal that dealers establish thresholds parallel to the Marketplace Thresholds, we do not foresee significant technological implications arising from the Proposed Guidance. However, as noted above, and in our previous submission, development and implementation of dealer based thresholds would be prohibitively expensive, and given the need to develop programs that would take into account the entire market and project the effect of trading into the future, may not be possible. Rather than providing further market protection, the requirement would result in industry confusion, inconsistency in practices and issues relating to client priority where trades are held back.

2. **One of the perceived benefits of harmonization would be greater predictability. The Proposed Guidance does not propose instituting a uniform control mechanism that all marketplaces should use to implement Marketplace Thresholds. Should a uniform control mechanism for marketplaces be proposed or would the prescribed threshold levels and Guiding Principles adequately ensure the operation of a fair and orderly market and provide sufficient predictability? Are there other benefits to harmonization of marketplace control mechanisms?**

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Increased predictability through harmonization is very important to the efficiency of the market, as it creates a uniform trading experience. Uniform control mechanisms would assist in ensuring more complete consistency and predictability in the operation of the thresholds, and their interaction with dealer systems. However, the prescribed thresholds and the Guiding Principles will likely afford sufficient predictability.

3. Is the approach of using both an NLSP reference price and a One-Minute Reference Price appropriate?

The approach is appropriate, provided that in the absence of a One-Minute Reference Price, the NLSP is relatively recent.

4. Is the one minute increment proposed for the One-Minute Reference Price appropriate? If not, why not and should the one minute increment be increased or decreased instead? Is there an alternative reference price that would better address erroneous orders that are part of a series of orders that have been generated from the same source over a very short period of time or are part of a series of stop-loss orders?

The One-Minute Reference Price has the benefit of simplicity. However, after using this model, it may become clear that a different increment which provides more or less variability may be appropriate. We suggest that the Proposed Guidance be revised to provide IIROC with the ability to make adjustments to this parameter if necessary, on a timely basis, without going through the entire regulatory comment process to do so.

5. Is it appropriate not to extend Marketplace Thresholds to Opening Orders and Market-on-Close Orders? Are there any other order types that should not be subject to Marketplace Thresholds?

The IIAC agrees that is appropriate not to extend Marketplace Thresholds to Opening Orders and Market-on-Close Orders.

6. Is it appropriate that the first trade in a security on a particular trading day in Canada and the first trade in a security in Canada after a regulatory trading halt are not subject to Marketplace Thresholds?

The IIAC agrees that such trades should not be subject to Marketplace Thresholds, given that the appropriate price for a security may not be reflected in these prices.

7. **Is the requirement in Part 8 of Policy 7.1 for an Access Person or Participant to ensure that order parameters of every automated order system it or any client uses are tailored to not exceed specific Marketplace Threshold levels necessary or appropriate?**

   We re-iterate our position, as stated in the introduction of this letter and in response to Question 1. The concerns raised above are relevant regardless of whether trades are conducted through an order management system, direct market access or on the cash desk.

8. **IIROC is proposing that the implementation date be at least 180 days following the publication of the final Guidance. Is this time period sufficient to make any necessary technological changes? Are there any specific considerations which IIROC should take into account in establishing an implementation deadline?**

   Provided that the provision requiring dealers to set threshold parameters is not implemented, a 180 day implementation period should be sufficient. If dealer thresholds are required, a much longer period will be required, given that the technology to accommodate this requirement does not currently exist.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

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